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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re,

MARTIFER AURORA SOLAR, LLC, a  
Nevada limited liability company,

- ☐ Affects Martifer Aurora Solar, LLC  
☐ Affects Martifer Solar USA, Inc.  
☒ Affects all Debtors

Case Nos. BK-S-14-10355-abl and  
BK-S-14-10357-abl

Jointly Administered under  
Case No. BK-S-14-10355-abl

Chapter 11

**MOTION REGARDING NOTICE OF  
DESIGNATION OF RESPONSIBLE  
PERSONS**

Hearing Date: March 20, 2014  
Hearing Time: 1:30 p.m.

**1. Introduction**

Debtors Martifer Solar USA, Inc. ("Martifer") and Martifer Aurora Solar, LLC ("Aurora", together with Martifer, "Debtors") respectfully ask the Court to amend its prior orders designating Roland Kiser and Klaus Bernhart as responsible persons pursuant to Bankruptcy Rule 9001(5)(A).

## 2. Background

On January 22, 2014, each of the Debtors filed Designations of Responsible Persons. See Dkt. No. 11 (case no. BK-S-14-10357-abl) and Dkt. No. 12 (case no. BK-S-14-10355-abl (the “Designations”). In the Designations, the Debtors identified Mr. Kiser, Martifer’s then-Chief Executive Officer, and Klaus Bernhart, Martifer’s then-Chief Financial Officer, as the natural persons responsible for the duties and obligations of the Debtors in their Chapter 11 cases.

During the January 28, 2014 hearing on the Designations and other matters, with respect to the Designations the Court stated “I’m a little curious that there were what appeared to be motions with respect to responsible persons under Bankruptcy Rule 9001(5). Do you want to talk about that briefly?” Jan. 28, 2014 Trans at 20:13-16. Following argument by Debtors’ counsel, the Court held as follows:

I’ve reviewed the pleadings or the papers I should say. I’m not really sure they’re motions or pleadings. That’s the reason I brought it up. I don’t think there’s any ruling from the Court that’s required. I reviewed the responsible person papers in Aurora at Docket Entry No. 12 and at USA at Docket No. 11. To the extent that the designees are within the scope of the folks that are identified under Rule 9001.5, they’re acceptable to the Court.

Id. at 21:4-11.

Notwithstanding the Court’s comments, in an abundance of caution Debtors submitted proposed orders on the Designations to the Court. On February 4, 2014, the Court entered Orders Designating Responsible Persons as to both Debtors. See Dkt. Nos. 88 (order) and 91 (notice of entry of order) (case no. BK-S-14-10357-abl) and Dkt. Nos. 90 (order) and 97 (notice of entry of order (case no. BK-S-14-10355-abl) (the “Designation Orders”).

Both the Designations and this motion are result of actions by Martifer’s board. At the time of the filing of the Designations, both Mr. Kiser and Mr. Bernhart served as officers of Debtors pursuant to their respective employment agreements (the “Employment Agreements”). Declaration of Pedro Gomes-Pereira (the “Pereira Dec.”) at ¶ 5. The Employment Agreements were for a one year period until March 10, 2014 after which time continued employment would be on an at-will basis. Id. at ¶ 5.

1 On March 9, 2014, the day prior to the expiration of the Employment Agreements, the Board  
2 of Directors of Martifer through its Executive Committee appointed responsible parties in  
3 accordance with Bankruptcy Rule 9001(5)(A) (the “Appointment”). Id. at ¶ 6. Among other things,  
4 the Appointment appointed Michael Tucker of FTI as Chief Restructuring Officer and gave Mr.  
5 Tucker broad authority relating to Martifer’s restructuring and Martifer’s interactions with the  
6 undersigned proposed bankruptcy counsel, subject to any necessary approval of this Court. Id. at ¶ 7  
7 2. The Court is scheduled to approve Mr. Tucker as Chief Restructuring Officer on March 20, 2014.  
8 *See* Motion to Retain FTI [Docket No. 333]. Upon such approval, Mr. Tucker will become the  
9 responsible party in accordance with Bankruptcy Rule 9001(5)(A).

10 The Appointment also removed Mr. Kiser and Mr. Bernhart as responsible persons for  
11 Martifer. *Pereira Dec.*, at ¶ 8. Concurrently herewith, Debtors have filed a designation of  
12 responsible persons identifying Mr. Tucker as the individual having authority pursuant to  
13 Bankruptcy Rule 9001(5)(A). FTI, along with former officers and other employees of the Debtors,  
14 are in the process of developing a retention program. Moreover, the parent of Martifer is in the  
15 process of appointing a third party independent director who will interface with FTI and Martifer’s  
16 executive committee with respect to intercompany matters between Martifer and its affiliates. Id. at  
17 ¶ 9.

### 18 **3. Legal Authority and Request for Relief**

19 Bankruptcy Rule 9001(5)(A) defines “Debtor” and provides that “when any act is required  
20 by these rules to be performed by a debtor or when it is necessary to compel attendance of a debtor  
21 for examination and the debtor is not a natural person: (A) if the debtor is a corporation, ‘debtor’  
22 includes, if designated by the court, any or all of its officers, members of its board of directors or  
23 trustees or of a similar controlling body, a controlling stockholder or member, or any other person in  
24 control.”

25 As a result of the expiration of the Employment Agreements, Mr. Kiser and Mr. Bernhart are  
26 no longer responsible officers of either Debtor. Accordingly, the Debtor requests that the Court  
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28

1 amend the Designation Orders to approve Michael Tucker as the responsible party of the Debtors in  
2 accordance with Bankruptcy Rule 9001(5)(A).

3 DATED this 13th day of March 2014.

4 **FOX ROTHSCHILD LLP**

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